

NOTE: Act 204, SLH 1982, changed the department name from Regulatory Agencies to Commerce and Consumer Affairs, effective June 10, 1982.

Any reference in title to Department of Regulatory Agencies shall be to Department of Commerce and Consumer Affairs.

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TITLE 16

DEPARTMENT OF REGULATORY AGENCIES

CHAPTER 302

OFFICE OF CONSUMER PROTECTION
NONADJUDICATIVE PROCEDURES

§16-302-1	Scope of investigation
§16-302-2	Notice of purpose and scope of investigation
§16-302-3	Subpoenas; extension of time for compliance
§16-302-4	Conduct of investigational hearings
§16-302-5	Documents and transcripts
§16-302-6	Role of counsel

Historical Note: This chapter is based substantially upon State of Hawaii, Office of Consumer Protection, Regulation I, Rules for Conducting Nonadjudicative Procedures. [Eff 7/31/70; R 6/19/81]

§16-302-1 Scope of investigation. Inquiries and investigations are conducted pursuant to the various consumer protection statutes enacted by the legislature, including chapter 487, Hawaii Revised Statutes. [Eff 6/19/81] (Auth: HRS §§487-5, 487-9) (Imp: HRS §§487-5, 487-9)

§16-302-2 Notice of purpose and scope of investigation. Any person or business organization under investigation which is compelled or requested to furnish information or documentary evidence shall be notified of the purpose and scope of the investigation. [Eff 6/19/81] (Auth: HRS §§487-5, 487-9) (Imp: HRS §§487-5, 487-9)

§16-302-3 Subpoenas; extension of time for compliance. (a) The director of the office of consumer protection or a duly delegated staff member may issue a

subpoena, directing the person named therein to appear before a designated representative at a designated time and place to testify or to produce documentary evidence, or both, relating to any matter under investigation by the office of consumer protection.

(b) The director or a duly delegated staff member for good cause shown, may extend the time prescribed for compliance with subpoenas issued during the investigation of any matter.

(c) In cases of failure to respond to investigative subpoenas, appropriate action for enforcement may be initiated by the director of the office of consumer protection or the attorney general. [Eff 6/19/81] (Auth: HRS §§487-5, 487-9) (Imp: HRS §§487-5, 487-9)

§16-302-4 Conduct of investigational hearings. (a) Investigational hearings shall be presided over by the director or a designated representative, for the purpose of hearing testimony of witnesses and receiving exhibits, documents, and other data relating to any subject under investigation.

(b) Such hearings may be stenographically reported at the option of the presiding official, and if reported, a transcript thereof shall be made a part of the record of the investigation.

(c) Unless otherwise ordered by the director or a designated representative, investigational hearings shall not be made public. If the director orders a public hearing, all persons involved shall be apprised that the hearing is public.

(d) In the conduct of an investigational hearing, the presiding official as well as the attorney for the office of consumer protection may ask questions of the witness to elicit information deemed pertinent to the issue.

(e) The presiding official shall take all necessary action to regulate the course of the hearing, to avoid delay, and to prevent or restrain disorderly, dilatory, obstructive, or contumacious conduct or contemptuous language.

(f) In nonpublic hearings no person shall be allowed to be present except the person being interrogated, the person's business associates, the person's attorney, the presiding official, stenographer or court reporter if the hearing is stenographically reported, and representatives of the office of consumer protection. [Eff 6/19/81] (Auth: HRS §§487-5, 487-9) (Imp: HRS §§487-5, 487-9)

§16-302-5 Documents and transcripts. Any person compelled to submit documents or data or to testify in an investigational hearing shall be entitled to retain a copy or on payment of costs thereof, procure a copy of any document submitted by the person, and in the instance of stenographically reported hearings, may inspect the official transcript of the person's testimony. After examining the transcript, the person may call

to the attention of the hearing officer who presided at the hearing, any mistakes or errors in the transcript. A copy of the person's own testimony as transcribed may be purchased from the reporter. [Eff 6/19/81] (Auth: HRS §§487-5, 487-9) (Imp: HRS §§487-5, 487-9)

§16-302-6 Role of counsel. (a) Any witness compelled to appear in person in an investigational hearing may be accompanied, represented, and advised by counsel.

(b) Counsel for a witness may advise the witness in confidence with respect to any question asked of the witness. If counsel has advised the witness not to answer a question and for this reason the witness refuses to answer a question, then counsel shall briefly state for the record the legal grounds for such refusal.

(c) Where it is claimed that the testimony or other evidence sought from the witness is outside the scope of the investigation, or that to answer the question or to produce the evidence might involve self-incrimination, counsel for the witness may object on the record to the question or requirement to produce documentary evidence, and shall state briefly and precisely the grounds therefor.

(d) Any objection made under subsection (c) will be treated as a continuing objection and will be preserved throughout the further course of the hearing without the necessity of repeating the objection as to any similar line of inquiry.

(e) Counsel for a witness may not interrupt, for any purpose or to any extent not allowed by subsections (b) and (c), the examination of the witness by making any objections or statements on the record.

(f) Counsel for the witness may not examine any witness or request the witness to produce documents or data in addition to that compelled under the subpoena. Counsel for the witness may request a recess for the purpose of asking the presiding official to submit certain questions to the witness or to request the witness to produce documentary evidence or data. The granting of this request shall be discretionary with the presiding official.

(g) Following the completion of the examination of the witness, counsel for the witness may on the record request the presiding official to permit the witness to clarify any of the answers in order that they may not be left equivocal or incomplete on the record. The granting or denial of such request shall be within the sole discretion of the presiding official. [Eff 6/19/81] (Auth: HRS §§487-5, 487-9) (Imp: HRS §§487-5, 487-9)

DEPARTMENT OF REGULATORY AGENCIES

The repeal of State of Hawaii, Office of Consumer Protection, Regulation I, and the adoption of chapter 302, Office of Consumer Protection Nonadjudicative Procedures, on the Summary Page dated June 1, 1981, were adopted on June 1, 1981, following public hearings held in Hilo on May 18, 1981, Kona on May 19, 1981, Kahului on May 20, 1981, Honolulu on May 23, 1981, and Lihue on May 29, 1981, after public notice was given in the Honolulu Advertiser and the Honolulu Star-Bulletin on April 27, 1981.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Stanley D. Suyat

STANLEY D. SUYAT

Director of Consumer Protection

/s/ Mary G. F. Bitterman

MARY G. F. BITTERMAN

Director of Regulatory Agencies

APPROVED AS TO FORM:

/s/ Ronald Shigekane

Deputy Attorney General

/s/ George R. Ariyoshi

GEORGE R. ARIYOSHI

Governor of Hawaii

Date: June 6, 1981

§16-302-3

June 9, 1981

Filed